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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ZEUS ROBLES,

Petitioner,

vs.

DAVID LONG, Warden,

Respondent.

CASE NO. 13-CV-0067-JLS (BLM)

**ORDER (1) ADOPTING REPORT
AND RECOMMENDATION; (2)
DENYING PETITION FOR WRIT
OF HABEAS CORPUS; AND, (3)
DENYING CERTIFICATE OF
APPEALABILITY**

(EFC No. 1, 15)

Presently before the Court is Petitioner Zeus Robles's ("Petitioner") petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (ECF No. 1). Also before the Court is Magistrate Judge Barbara L. Major's report and recommendation ("R&R") advising this Court to dismiss Petitioner's petition. (R&R, ECF No. 15).

Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1) set forth a district court’s duties in connection with a magistrate judge’s R&R. The district court must “make a de novo determination of those portions of the report . . . to which objection is made,” and “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); *see also United States v. Raddatz*, 447 U.S. 667, 673–76 (1980); *United States v. Remsing*, 874 F.2d 614, 617 (9th Cir. 1989). In the absence of timely objection, however, the Court “need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72 advisory committee’s note (citing

1 *Campbell v. U.S. Dist. Court*, 501 F.2d 196, 206 (9th Cir. 1974)); *see also United States*
 2 *v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (“[T]he district judge must review
 3 the magistrate judge’s findings and recommendations de novo if *objection is made*, but
 4 not otherwise.”).

5 Here, Petitioner failed to file timely objections to the Magistrate Judge’s R&R.
 6 (*See R&R 10*, ECF No. 15) (ordering parties to file objections “no later than July 15,
 7 2013.”). Having reviewed the R&R, the Court finds that it is thorough, well-reasoned,
 8 and contains no clear error. Accordingly, the Court **ADOPTS** the Magistrate Judge’s
 9 R&R in its entirety and **DISMISSES** Petitioner’s petition.

10 The Court is obliged to determine whether a certificate of appealability should
 11 issue in this matter. *See Fed. R. App. P. 22(b)*. A court may issue a certificate of
 12 appealability “if the applicant has made a substantial showing of the denial of a
 13 constitutional right.” 28 U.S.C. § 2253(c)(2). A petitioner satisfies this standard by
 14 showing that “reasonable jurists” could debate a court’s assessment of the constitutional
 15 claims. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Where, as here, the petition is
 16 dismissed on procedural grounds, a certificate of appealability “should issue when the
 17 petitioner shows, at least, [1] that jurists of reason would find it debatable whether the
 18 petition states a valid claim of the denial of a constitutional right and [2] that jurists of
 19 reason would find it debatable whether the district court was correct in its procedural
 20 ruling.” *Id.*

21 Here, Petitioner failed to object at trial to his purported shackling in the presence
 22 of the jury. Thus, the state appellate court found that Petitioner waived this argument
 23 on appeal and the R&R properly concluded that Petitioner was foreclosed from
 24 advancing the argument as a basis for federal habeas relief. (R&R 8–9, ECF No. 15).
 25 Moreover, Petitioner’s due process claim lacks merit because the state court record
 26 provides no indication that Petitioner’s alleged shackling in the presence of the jury had
 27 any effect on the verdict. Indeed, the only evidence in the record regarding this issue
 28 suggests that the jury never saw the shackles at all. (*Id.* at 10). Thus, the Court finds

1 that no reasonable jurist would debate this Court's procedural ruling or its denial of
2 Petitioner's constitutional claim.

3 Accordingly, the Court **DENIES** a certificate of appealability. This Order
4 concludes the litigation in this matter. The Clerk shall close the file.

5 **IT IS SO ORDERED.**

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7 DATED: September 9, 2013

Janis L. Sammartino
8 Honorable Janis L. Sammartino
9 United States District Judge

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